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Docket No. 60,130-1109
01MRA0216

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Heaton, et al.
Serial No.: 09/915,805
Filed: 07/26/2001
Group Art Unit: 3683
Examiner: Torres, Melanie
Title: SPRING APPLIED ELECTRONIC RELEASE
PARKING BRAKE

REPLY BRIEF

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is in reply to the Examiner's Answer mailed on January 18, 2007.

New Grounds of Rejection

The Examiner presents a new grounds of rejection in the Examiner's Answer. The Examiner rejects claims 16-21 under 35 U.S.C. §102(b) over the *Messersmith* reference. There is no anticipation and this new grounds of rejection should be reversed. The Examiner's position is based upon an unreasonable interpretation of the *Messersmith* reference. The Examiner contends that fluid that is directed by a pump 40 constitutes a portion of the pump 40. The Examiner reads the pump 40 of the *Messersmith* reference and fluid that flows through conduits to which the pump is connected as the "electrically powered actuator having a portion that engages the spring and selectively moves the spring and releases the engaging portion out of the braking position" of Applicant's claims. It is unreasonable to interpret fluid that flows through a conduit that a pump is

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connected to be a portion of the pump. The Examiner's position that the fluid and pump 40 of the *Messersmith* reference constitute Applicant's electrically powered actuator is unreasonable and the rejection under 35 U.S.C. §102(b) must be reversed.

The Previous Grounds of Rejection

In the Examiner's Answer the Examiner fails to recognize that a proposed combination must provide some benefit in the context of the primary reference in order for the combination to be possible. Without providing any benefit to the *Laxhuber, et al.* reference (WO 01/05638), the proposed modification by adding teachings from the *Messersmith* reference cannot be made. Since the combination does not provide any benefit and it cannot be made, there is no *prima facie* case of obviousness. Additionally, the Examiner fails to indicate how either the *Laxhuber, et al.* reference or the *Messersmith* reference show or suggest the arrangement of Applicant's claims 18, 19 and 22 which include parking brake components associated with particular driveline components that are not disclosed in either of the *Laxhuber, et al.* or *Messersmith* references. For example, even if the combination could somehow be made, there is no suggestion for incorporating components with a transmission housing as recited in claim 18 or an axle assembly as recited in claims 19 or 22.

Conclusion

All rejections must be reversed.

Respectfully submitted,

CARLSON, GASKEY & OLDS, P.C.

March 19, 2007
Date

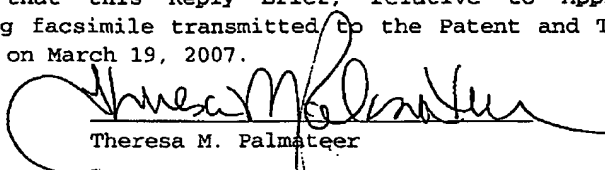


David J. Gaskey
Registration No. 37,139
400 W. Maple, Suite 350
Birmingham, MI 48009
(248) 988-8360

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CERTIFICATE OF FACSIMILE

I hereby certify that this Reply Brief, relative to Application Serial No. 09/915,805, is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on March 19, 2007.


Theresa M. Palmateer

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